

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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CLEARANCE  
U.S. DISTRICT COURT  
SAN JUAN, P.R.

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. Action No.

04-1888(C)

BECTON DICKINSON ACUTECARE  
HOLDINGS, INC.; BROWNING-FERRIS  
INDUSTRIES OF PUERTO RICO, INC.;  
GENERAL ELECTRIC COMPANY; THE  
MUNICIPALITY OF JUNCOS, PUERTO  
RICO; THE PUERTO RICO LAND  
ADMINISTRATION, AND THE PUERTO  
RICO DEVELOPMENT AND HOUSING  
IMPROVEMENT ADMINISTRATION,

Defendants.

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

**STATEMENT OF THE CASE**

1. This civil action is brought against defendants, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-6675 (CERCLA). This action seeks to recover from defendants Becton Dickinson AcuteCare Holdings, Inc., Browning-Ferris Industries of Puerto Rico, Inc., General Electric

Company, the Municipality of Juncos, the Puerto Rico Land Administration, and the Puerto Rico

Development and Housing Improvement Administration the costs incurred by the United States

in response to a release or threatened release of hazardous substances related to the Juncos

Landfill Site ("Site" or "Landfill") pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

The United States also requests that the Court enter a declaratory judgment that Defendants are liable for all response costs that may be incurred by the Plaintiff at the Site in the future, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2). This action also seeks imposition of civil penalties against defendants, pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), for failure to comply with an administrative order issued pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), as well as injunctive relief, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to compel compliance with that order.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district, pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because plaintiff incurred response costs within the District of Puerto Rico, all or a substantial part of the events or omissions giving rise to the claims for response costs and civil penalties occurred in this district, and the property from which the claims in this action arise is situated in this district.

### **THE DEFENDANTS**

4. Becton Dickinson AcuteCare Holdings, Inc. ("BD"), is a corporation organized and incorporated under the laws of the State of Delaware, having its principal place of business in

Juncos, Puerto Rico. BD has previously operated under the names "Becton Dickinson Puerto Rico, Inc." and "Becton Dickinson AcuteCare, Inc."

5. Browning-Ferris Industries of Puerto Rico, Inc. ("BFI"), is a subsidiary of Browning-Ferris Industries in Houston, Texas. BFI is a corporation organized and incorporated under the laws of the Commonwealth of Puerto Rico.

6. General Electric Company ("GE") is a corporation organized and incorporated under the laws of the State of New York, having its principal place of business in Fairfield, Connecticut. GE is successor-in-interest to the Radio Corporation of America ("RCA"), which merged with GE on or about December 31, 1987.

7. The Municipality of Juncos ("the City") is a duly formed municipality in the Commonwealth of Puerto Rico.

8. The Puerto Rico Land Administration ("PRLA") is an agency of the government of the Commonwealth of Puerto Rico.

9. The Puerto Rico Development and Housing Improvement Administration ("PRDHIA") is an agency of the government of the Commonwealth of Puerto Rico.

10. Each of the Defendants is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### **FACTS**

11. The Site is comprised of an inactive municipal landfill covering approximately 17 acres of land located in a residential area in Juncos, a municipality located in the north-central portion of Puerto Rico. The landfill was closed in 1981. Directly adjacent to the Site are a number of residential dwellings.

12. From 1934 until 1970, Fajardo Eastern Sugar Associates owned the Site property. The City operated the Landfill at the Site from approximately 1957 until it closed in 1981. During the time that the City operated the facility as a landfill, it accepted both municipal and industrial wastes.

13. On December 22, 1970, the PRLA acquired the Site through eminent domain proceedings against Fajardo Eastern Sugar Associates. In June 1980, the PRLA transferred ownership of the Site to the PRDHIA. On January 21, 1982, after the landfill closed, the PRDHIA sold the Site to the City.

14. In April 1982, EPA initiated sampling at the Site. Results of the sampling revealed that the soil at the Site is contaminated with hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including heavy metals such as mercury, cadmium, copper, nickel, lead, and zinc.

15. The results of groundwater sampling near the Site revealed the presence of chloroform at concentrations greater than 100 parts per billion. Chloroform is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Other hazardous substances detected in the groundwater at elevated levels include antimony, arsenic, beryllium, chromium manganese, and vanadium.

16. On March 15, 1984, EPA entered into an Administrative Order on Consent ("AOC") with BD for the performance of immediate corrective actions at the Site, including the imposition of access restrictions and placing a soil cover over some portions of the Site where waste was exposed, and for the performance of a preliminary investigation at the Site in order to assess the risks to human health and the environment posed by the presence of mercury in soils at the Site.

17. On October 9, 1984, BD entered into a second AOC with EPA for the performance of a Remedial Investigation and Feasibility Study ("RI/FS") at the Site. BD completed that RI/FS.

18. In or around November 1990, EPA separated the cleanup of the Site into two phases or operable units. The first operable unit ("OU1") focuses on the identification and abatement of the source of contamination at the Site. The second operable unit ("OU2") assesses the nature and extent of migration of contaminants from the Landfill into the groundwater.

19. On September 24, 1991, EPA issued the Record of Decision ("ROD") selecting a remedy for OU1. The OU1 ROD calls for the construction of a single-barrier cap to reduce surface infiltration, prevent direct contact, limit gas emissions, and control erosion.

20. On October 5, 1993, EPA issued a "no action" ROD for OU2. Although this ROD does not require remediation of the groundwater, it does require the establishment of institutional controls restricting groundwater removal in the area surrounding the Site, and groundwater monitoring, including sampling, analysis and reporting of results, to monitor contaminant levels in the groundwater.

21. On December 31, 1991, EPA sent a notice of potential liability letter, requesting implementation of the Remedial Design and Remedial Action ("RD/RA") for OU1, to BD and GE as generators of hazardous waste, to BFI as a transporter of hazardous waste, and to the City as the past operator and current owner of the Site. A subsequent title search revealed that the PRLA and PRDHIA were also past owners and therefore potentially liable parties. Notice letters were sent to those parties on or about April 17, 1992.

22. Negotiations with the Defendants for a consent decree governing the implementation of the selected OU1 remedy were unsuccessful and EPA issued and served Unilateral Administrative

Order Index No. II-CERCLA-20301 ("the OU1 Order") to all six Defendants on September 30, 1992, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), which Order required the Defendants to design and implement the remedy specified in the OU1 ROD and Statement of Work.

23. In or around September 1994, EPA offered the Defendants the opportunity to implement the remedy selected in the OU2 ROD, including the establishment of institutional controls and the implementation of groundwater monitoring activities. Again, negotiations with the Defendants for an agreement governing the implementation of the selected OU2 remedy were unsuccessful and EPA issued and served Unilateral Administrative Order Index No. II-CERCLA-95-0301 ("the OU2 Order") to all six Defendants on September 29, 1995, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), which Order required the Defendants to implement the remedy specified in the OU2 ROD.

24. In 1996, BD, BFI, and GE began design work pursuant to the requirements of the OU2 UAO and submitted a Project Operations Plan ("POP") to EPA. The POP provided for the initiation of sampling, analysis, and monitoring activities at existing wells, and the construction and installation of a new well cluster in accordance with the schedule and procedures approved by EPA, as part of the OU2 remedy. EPA approved the POP on June 20, 1996.

25. According to the schedule contained within the approved POP, the sampling, analysis, monitoring, and construction activities specified in the POP were scheduled to commence on July 4, 1996. None of these activities were initiated on that date.

26. In or around October 1998, the Defendants finally commenced construction and installation of a well cluster as specified in the POP for the OU2 remedy, and in early 1999, they conducted one round of groundwater sampling and laboratory analysis, which was required on a

quarterly basis for the first two years of monitoring pursuant to the POP. The analytical results of the sample testing were not submitted to EPA until May 2000.

27. The Defendants failed to conduct a second round of groundwater sampling and analysis until September 2001.

28. As of the date of this Complaint, the Defendants have failed to submit a plan for institutional controls or to implement institutional controls, as required under the POP, despite numerous demands and warnings by Plaintiff.

29. The Defendants were in violation of, and noncompliance with, the OU2 Order each day they failed to timely commence and complete the construction and installation of a new well cluster; failed to timely submit analytical results of groundwater sampling or otherwise conduct groundwater monitoring, sampling, and analysis; and failed to timely submit a plan for institutional controls or to implement institutional controls, in conformity with the schedule provided for in the POP, as set forth in Paragraphs 25, 26, 27, and 28 of this Complaint.

30. The Defendants continue to be in violation of, and noncompliance with, the OU2 Order each day they fail to submit a plan for institutional controls or to implement institutional controls, as required under the POP, as set forth in Paragraph 28 of this Complaint.

#### **FIRST CLAIM FOR RELIEF - RESPONSE COSTS**

31. The allegations contained in paragraphs 1 - 30 are realleged and incorporated herein by reference.

32. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

33. The Site contained hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

34. There was a release or a threatened release of hazardous substances into the environment at and from the Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. As a result of the release or threatened release of the hazardous substances at and from the Site, the United States has incurred "response costs" as defined in Section 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the release or threatened release of hazardous substances at and from the Juncos Landfill Site.

36. The response actions taken by the United States, and the resulting response costs incurred by the United States, are not inconsistent with the National Contingency Plan, as set forth at 40 C.F.R. Part 300

37. BD and GE each arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by each of them at the Site, or is the legal successor to a company that made such arrangement, and both are therefore liable parties within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), for all response costs incurred and to be incurred by the United States in connection with the Site.

38. BFI accepted hazardous substances for transport to the Site and selected the Site for the disposal of these hazardous substances and is therefore a liable party under Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), for all response costs incurred and to be incurred by the United States in connection with the Site.



39. The PRLA and the PRDHIA were each owners of the Site at the time of disposal and are therefore liable parties under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all response costs incurred and to be incurred by the United States in connection with the Site.

40. The City is the present owner of the Site and operated the Site at the time of disposal and is therefore a liable party under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), for all response costs incurred and to be incurred by the United States in connection with the Site.

41. Each of the Defendants is jointly and severally liable to the United States for all costs incurred by the United States, including prejudgment interest, in connection with the Site.

42. The United States is also entitled to a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each Defendant named in this Complaint is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs to be incurred by the United States at the Site in the future.

#### **SECOND CLAIM FOR RELIEF - CIVIL PENALTIES**

43. The allegations contained in paragraphs 1 - 42 are realleged and incorporated herein by reference.

44. Defendants failed and/or refused, without sufficient cause, to comply with the terms of the OU2 Unilateral Administrative Order.

45. Each of the Defendants is jointly and severally liable for the performance of all work required under the terms of the OU2 Order.

46. As a result of their failure and/or refusal, without sufficient cause, to comply with the terms of the OU2 UAO, Defendants are liable for civil penalties of not more than \$25,000 per

day for violations of the OU2 UAO occurring on or before January 30, 1997; \$27,500 per day for violations occurring on or after January 31, 1997, but before March 16, 2004; and \$32,500 per day for violations occurring on or after March 16, 2004, as prescribed under Section 106(b)(1) of the CERCLA, 42 U.S.C. § 9606(b)(1); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR) Part 19.

### **THIRD CLAIM FOR RELIEF - INJUNCTIVE RELIEF**

47. The allegations contained in paragraphs 1 - 46 are realleged and incorporated herein by reference.

48. Every day since July 4, 1996, or earlier, the Defendants have been in violation of, and noncompliance with, the OU2 Order, and they remain in violation of the OU2 Order at the time of filing of this Complaint, as set forth in Paragraph 28 of this Complaint.

49. The Defendants' noncompliance with the terms and conditions of the OU2 order is likely to continue absent a court order directing compliance with such terms and conditions.

50. Pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States is entitled to an order requiring the Defendants to comply and remain in compliance with all requirements, terms and conditions set forth in the OU2 Order and/or incorporated therein by reference, including all requirements and schedules set forth in the POP, and such other relief as the public interest and the equities of this case may require in order to abate an imminent and

substantial endangerment to the public health or welfare or the environment because of the actual or threatened release of hazardous substances from the Site.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff United States of America prays that the Court:

- a. Enter judgment in favor of the United States against all defendants, jointly and severally, for all costs incurred by the United States, including prejudgment interest, for its response actions;
- b. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that each of the Defendants is jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs to be incurred by the United States in connection with the Site;
- c. Enter judgement in favor of the United States against each of the Defendants awarding civil penalties in an amount of not more than \$25,000 per day for violation of the September 29, 1995, OU2 Unilateral Administrative Order for each day of violation occurring on or before January 30, 1997, \$27,500 per day for each day of violation occurring on or after January 30, 1997, but before March 16, 2004, and \$32,500 per day for violations occurring on or after March 16, 2004;
- d. Enter an order pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring the Defendants to comply and remain in compliance with all requirements, terms, and conditions set forth in the OU2 Order and/or incorporated therein by reference, including planning and implementing institutional controls relating to groundwater use and all other requirements and schedules set forth in the POP; and

- e. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 4 day of <sup>August</sup>~~July~~, 2004.

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